may be given in evidence even upon a new trial;" citing *Doe* v. *Bird*, 7 C. & P. 61; *Longley* v. *Ld. Oxford*, 1 M. & W. 508. But, after this admission has performed its office, it becomes of no force, whatever, for any purpose. It is then no more than the conversations of counsel about the cause, and not evidence at all. Counsel have no general authority to bind their clients by general admissions about the cause, since they do not represent their clients in any such capacity. But in the other capacity, of framing the issue, and arranging what facts shall be conceded, and what proved, at the trial, they do represent them most directly and emphatically. The learned commentator on evidence lays this down very clearly in the section just referred to, citing *Young* v. *Wright*, 1 Camp. 139, 141, and many other cases. We should therefore entertain no question, that the dissenting judge, the present learned Chief Justice PARK, of that court, was entirely in the right in holding "that the evidence should have been rejected."

But the opinion of such a court is entitled to more weight than anything we could claim on behalf of our own views, and may very probably be correct, upon some ground which does not occur to us in our unassisted and brief examination. I. F. R.

Supreme Court of the United States.

EX PARTE JAMES S. ROBINSON.

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.

The Act of Congress of March 2d 1831, entitled, "an act declaratory of the law concerning contempts of court," limits the power of the Circuit and District Courts of the United States to three classes of cases: 1st, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2d, where there has been misbehavior of any officer of the courts in his official transactions; and, 3d, where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts.

The 17th section of the Judiciary Act of 1789, in prescribing fine or imprisonment as the punishment which may be inflicted by the courts of the United States for contempts, operates as a limitation upon the manner in which their power in this respect may be exercised, and is a negation of all other modes of punishment.

The power to disbar an attorney is possessed by all courts which have authority to admit attorneys to practice. But the power can only be exercised where there has been such conduct on the part of the party complained of as shows him to be unfit to be a member of the profession; and before judgment disbarring him can be rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defence.

Mandamus is the appropriate remedy to restore an attorney disbarred where the court below has exceeded its jurisdiction in the matter.

PETITION for mandamus to the judge of the District Court of the United States for the Western District of Arkansas.

The opinion of the court was delivered by

FIELD, J.—On the 16th day of July 1873, the grand jury of the western district of Arkansas reported to the District Court of the United States for the district, then in session at Fort Smith, that they had made every effort in their power to have a witness by the name of Stephenson summoned to appear before them; that for this purpose a *subpœna* for the witness had been placed the day previous in the hands of a deputy marshal by the name of Sheldon, for service; that the deputy marshal, on the same day, went to the town of Van Buren, as he said, to make the service; that after he had left the witness was seen on the streets at Fort Smith, and the *subpœna* was on that morning returned unserved; that they had learned from evidence before them that the witness knew that a *subpœna* was issued for him, and had for that reason come to Fort Smith, "but," continues the report, "after seeing the attorney, J. S. Robinson, in the Nash case, very suddenly absented himself." The jury, therefore, prayed the court to issue an order that the witness, Stephenson, be brought before them.

Upon this report, without other complaint, the court ordered that Sheldon, the deputy marshal, Stephenson, the witness, and Robinson, the attorney, "show cause why they should not be punished as for a contempt."

Two days afterwards, on the 18th of July, the petitioner filed the response of the deputy marshal to the order. The judge then reminded the petitioner that there was also a rule against him, to which he replied: "Yes, sir; I know it and I am here to respond. I don't know what there is for me to answer. It," referring to the report of the grand jury, "says I saw Silas R. Stephenson. I do not know what the grand jury has to do with my private business in my law office," and was proceeding to reflect upon the action of the grand jury, when the judge said: "You must answer in writing, Mr. Robinson;" to which the petitioner replied, "the rule itself does not require me to respond in writing." Upon this the judge said, turning to the clerk, "it should have done so; you will amend the order if it does not, Mr. Clerk." The petitioner declined to answer the rule until it was amended. The judge then

said: "Well, I will make the order for you to respond in writing now. Mr. Clerk, you will enter an order requiring Mr. Robinson to answer the rule in writing." Upon which the petitioner said, "I shall answer nothing;" and thereupon immediately, without time for another word, the judge ordered the clerk to strike the petitioner's name from the roll of attorneys, and the marshal to remove him from the bar.

This account of the language used by the petitioner and the judge is taken from the latter's response to the alternative writ issued by this court. The judge states at the same time that the tone and manner of the petitioner were angry, disrespectful and defiant; and that regarding the words "I shall answer nothing," and the tone in which they were uttered as in themselves grossly and intentionally disrespectful, as an expression of an intention to disobey and treat with contempt an order of the court, and believing that the petitioner intended to intimidate him in the discharge of his duties, he felt it due to himself and his office to inflict summary and severe punishment upon the petitioner.

The order of the court disbarring the petitioner, made at the time, and entered in the minutes of the court kept by the clerk, was declared by the judge to be erroneous in form, and afterwards, on the 28th of July, a more formal order was entered *nunc pro tunc*. This latter order recites the report of the grand jury mentioned above, the rule to show cause issued thereon why the parties should not be punished as for a contempt, amended from the original order by the insertion of the words, "forthwith in writing and under oath:" and that the petitioner having notice at the time that he was required to respond to the rule, "in a grossly contemptuous, contumacious and defiant manner," in open court, refused to respond in writing; and then proceeds to decree that, for his contempt committed in open court, as well as for his contempt committed in refusing to respond to the rule, the license of the petitioner as an attorney and counsellor-at-law and solicitor in chancery be vacated; that the petitioner be disbarred from further practice in the court, and that his name be stricken from the roll of attorneys, counsellors and solicitors of the court.

Before this amended order was entered the petitioner, through counsel, filed a motion to vacate the judgment disbarring him upon various grounds, which were specified. After its entry a motion to set aside the order as amended was made, in which the petitioner

adopted the grounds of the original motion and added others. The substance of the more important of these was, that no charges had been previously preferred in writing and filed against him; that he had had no notice of any charges; that the report of the grand jury contained no charge which he could be required to answer; that no rule had been served upon him to show cause why he should not be disbarred; that he had had no trial previous thereto, and had been denied the right of being heard in his defence; and that the court had no jurisdiction under the circumstances to render the judgment disbarring him.

The petitioner also set up among the grounds upon which he would rely, that the sentence he uttered, "I shall answer nothing," was incomplete, and that he was prevented from finishing it by the action of the judge in interrupting him with the judgment disbarring him; that the sentence completed would have been, "I shall answer nothing until the order to answer the rule in writing shall be served upon me."

The petitioner also disclaimed any intention to commit a contempt of the court, or to act in defiance of its orders or authority at the time, and averred that he was not conscious of the conduct attributed to him towards the court. This statement was verified by his oath; but the motion was denied.

The petitioner now asks from this court for a *mandamus* upon the judge to vacate the order disbarring him and to restore him to the roll of attorneys and counsellors. In his petition, which is verified, he refers to the proceedings of the court below, there cord of which he produces, and states that in the interview which the grand jury mentioned there was no allusion made to the Nash case or to the grand jury, and that the consultation related to a totally different matter.

The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject. they became possessed of this power. But the power has been limited and defined by the Act of Congress of March 2d 1831, 4 Stat. at Large 487. The act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court, which derives its existence

and powers from the Constitution, may perhaps be a matter of doubt. But that it applies to the circuit and district courts there can be no question. These courts were created by Act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The Act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases: 1st, where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice; 2d, where there has been misbehavior of any officer of the courts in his official transactions; and, 3d where there has been disobedience or resistance by any officer, party, juror, witness or other person, to any lawful writ, process, order, rule, decree or command of the courts. As thus seen, the power of these courts in the punishments of contempts can only be exercised to insure order and decorum in their presence, to secure faithfulness on the part of their officers in their official transactions, and to enforce obedience to their lawful orders, judgments and processes.

If we now test the report of the grand jury by this statute, we find nothing in it which justified any proceeding whatever as for a contempt on the part of the court below against Robinson. No act of his is mentioned which could constitute within the statute a contempt either of the court or of its judge. The allegation that the witness Stephenson, after seeing Robinson, had suddenly absented himself, amounted to nothing more than an insinuation that possibly he may have been advised to that course by Robinson. There was no averment of any fact which the court could notice or the attorney was bound to explain.

Whatever contempt was committed by the petitioner consisted in the tone and manner in which his language to the court was uttered. On this hearing we are bound to take the statements in that respect of the judge embodied in his order as true, for the question before us is not whether the court erred, but whether it had any jurisdiction to disbar the petitioner for the alleged contempt.

The law happily prescribes the punishment which the court can impose for contempts. The 17th section of the Judiciary Act of 1789 declares that the court shall have power to punish contempts of their authority in any cause or hearing before them, by fine or

imprisonment, at their discretion. The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment. The judgment of the court disbarring the petitioner, treated as a punishment for a contempt, was, therefore, unauthorized and void.

The power to disbar an attorney proceeds upon very different grounds. This power is possessed by all courts which have authority to admit attorneys to practice. But the power can only be exercised where there has been such conduct on the part of the parties complained of as shows them to be unfit to be members of the profession. Parties are admitted to the profession only upon satisfactory evidence that they possess fair private character and sufficient legal learning to conduct causes in court for suitors. The order of admission is the judgment of the court that they possess the requisite qualifications both in character and learning. They become by such admission officers of the court, and, as is said in *Ex parte Garland*, 4 Wall. 378, "they hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded." Before a judgment disbarring an attorney is rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defence. This is a rule of natural justice, and is as applicable to proceedings taken to deprive an attorney of his right to practise his profession, as it is to proceedings taken to reach his property. And such has been the general, if not the uniform, practice of the courts of this country and of England. There may be cases undoubtedly of such gross and outrageous conduct in open court on the part of the attorney, as to justify very summary proceedings for his suspension or removal from office; but even then he should be heard before he is condemned: *Ex parte Heyfron*, 7 How. (Miss.) 127; *People* v. *Turner*, 1 Cal. 148; *Fletcher* v. *Dangerfield*, 20 Id. 430; *Beene* v. *State*, 22 Ark. 157; *Ex parte Bradley*, 7 Wallace 364; *Bradley* v. *Fisher*, 13 Id. 354. The principle that there must be citation before hearing, and hearing or opportunity of being heard before judgment, is essential to the security of all private rights. Without its observance no one would be safe from oppression wherever power may be lodged.

That *mandamus* is the appropriate remedy in a case like this to restore an attorney disbarred, where the court below has exceeded

its jurisdiction in the matter, was decided in *Ex parte Bradley*, 7 Wallace 364. It would serve no useful purpose to repeat the reasons by which this conclusion was reached, as they are fully and clearly stated in that case, and are entirely satisfactory.

A peremptory *mandamus* must issue, requiring the judge of the court below to vacate the order disbarring the petitioner, and to restore him to his office; and it is so ordered.

MILLER, J., dissented.

Court of Errors and Appeals of New Jersey.

MAYOR AND COMMON COUNCIL OF NEWARK *v.* THE STATE, AGENS ET AL., PROSECUTORS.

A statute authorizing the expense of paving the road-bed of a city street to be assessed in the proportion of two-thirds on the property abutting on the street and the remaining third on the public at large, is unconstitutional.

Assessments for local improvements of this character may be made against the property peculiarly benefited, but such assessment must be made to the extent only of such peculiar benefits.

This rule does not apply to improvements of the sidewalk, which is to be regarded as subservient to the premises to which it is attached and the expense of improving which may be charged wholly to the owner.

A statute directing a municipal corporation to have a street paved at the expense of the property-owners, and thereafter to keep it in repair at the expense of the city, is not a contract with the property-owners, and the legislature may direct a repaving at their expense.

THE 7th section of the Charter of Newark (Pamphlet Laws 1849, pp. 206, 207) provides "that it shall be lawful for the Common Council, on the application of three-fourths of the owners of property in any street, to order the said street or section of the street to be graded, gravelled, paved, flagged or planked, either in whole or in part, in such manner as they shall deem most advisable," &c., "and that after the said grading, gravelling, paving, &c., is once effected, then the city shall take charge of and keep the same in repair without further assessment." Acts 1849, pp. 206, 207.

A section of Broad street between Market street and the Morris Canal was originally paved under the foregoing provision; and had been now repaved by virtue of the following section in the supplement to the charter passed 18th March 1868, p. 411, viz.: "That when more than one-half of the owners of the frontage on the line of any street or section thereof which is now paved, shall apply to have such street or section repaved, it may be lawful for the Com-